

**§ 30.314 How is a hearing conducted?**

(a) The FAB reviewer retains complete discretion to set the time and place of the hearing, including the amount of time allotted for the hearing, considering the issues to be resolved. At the discretion of the reviewer, the hearing may be conducted by telephone or teleconference. As part of the hearing process, the FAB reviewer will consider the written record forwarded by the district office and any additional evidence and/or argument submitted by the claimant. The reviewer may also conduct whatever investigation is deemed necessary.

(1) The FAB reviewer will try to set the hearing at a place that is within commuting distance of the claimant's residence, but will not be able to do so in all cases. Therefore, for reasons of economy, the claimant may be required to travel a roundtrip distance of up to 200 miles to attend the hearing.

(2) In unusual circumstances, the FAB reviewer may set a place for the hearing that is more than 200 miles roundtrip from the claimant's residence. However, in that situation, OWCP will reimburse the claimant for reasonable and necessary travel expenses incurred to attend the hearing if he or she submits a written reimbursement request that documents such expenses.

(b) Unless otherwise directed in writing by the claimant, the FAB reviewer will mail a notice of the time and place of the hearing to the claimant and any representative at least 30 days before the scheduled hearing date. If the claimant only objects to part of the recommended decision, the FAB reviewer may issue a final decision accepting the remaining part of the recommendation of the district office without first holding a hearing (see § 30.316). Any objection that is not presented to the FAB reviewer, including any objection to HHS's reconstruction of the radiation dose to which the employee was exposed (if any), whether or not the pertinent issue was previously presented to the district office, is deemed waived for all purposes.

(c) The hearing is an informal process, and the reviewer is not bound by common law or statutory rules of evidence, or by technical or formal rules

of procedure. The reviewer may conduct the hearing in such manner as to best ascertain the rights of the claimant. During the hearing process, the claimant may state his or her arguments and present new written evidence and/or testimony in support of the claim.

(d) Testimony at hearings is recorded, then transcribed and placed in the record. Oral testimony shall be made under oath.

(e) The FAB reviewer will furnish a transcript of the hearing to the claimant, who has 20 days from the date it is sent to submit any comments to the reviewer.

(f) The claimant will have 30 days after the hearing is held to submit additional evidence or argument, unless the reviewer, in his or her sole discretion, grants an extension. Only one such extension may be granted.

(g) The reviewer determines the conduct of the hearing and may terminate the hearing at any time he or she determines that all relevant evidence has been obtained, or because of misbehavior on the part of the claimant and/or representative at or near the place of the oral presentation.

**§ 30.315 May a claimant postpone a hearing?**

(a) The FAB will entertain any reasonable request for scheduling the hearing, but such requests should be made at the time the hearing is requested. Scheduling is at the sole discretion of the FAB reviewer, and is not reviewable. Once the hearing is scheduled and appropriate written notice has been mailed, it cannot be postponed at the claimant's request for any reason except those stated in paragraph (b) of this section, unless the FAB reviewer can reschedule the hearing on the same docket (that is, during the same hearing trip). When the request to postpone a scheduled hearing does not meet one of the tests of paragraph (b) of this section and cannot be accommodated on the same docket, no further opportunity for a hearing will be provided. Instead, the FAB will consider the

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claimant's objections by means of a review of the written record. In the alternative, a teleconference may be substituted for the hearing at the discretion of the reviewer.

(b) Where the claimant is hospitalized for a reason which is not elective, or where the death of the claimant's parent, spouse, or child prevents attendance at the hearing, a postponement may be granted upon proper documentation.

(c) At any time after requesting a hearing, the claimant can request a change to a review of the written record by making a written request to the FAB. Once such a change is made, no further opportunity for a hearing will be provided.

#### **§ 30.316 How does the FAB issue a final decision on a claim?**

(a) If the claimant does not file a written statement that objects to the recommended decision and/or requests a hearing within the period of time allotted in § 30.310, or if the claimant waives any objections to all or part of the recommended decision, the FAB may issue a final decision accepting the recommendation of the district office, either in whole or in part (see §§ 30.311, 30.312 and 30.314(b)).

(b) If the claimant objects to all or part of the recommended decision, the FAB reviewer will issue a final decision on the claim after either the hearing or the review of the written record, and after completing such further development of the case as he or she may deem necessary.

(c) Any recommended decision (or part thereof) that is pending either a hearing or a review of the written record for more than one year from the date the FAB received the written statement that objected to the recommended decision and/or requested a hearing shall be considered a final decision of the FAB on the one-year anniversary of such date. Any recommended decision described in § 30.311 that is pending at the FAB for more than one year from the date that the period of time described in § 30.310 expired shall be considered a final decision of the FAB on the one-year anniversary of such date.

(d) The decision of the FAB, whether issued pursuant to paragraph (a), (b) or (c) of this section, shall be final upon the date of issuance of such decision, unless a timely request for reconsideration under § 30.319 has been filed.

(e) A copy of the final decision of the FAB will be mailed to the claimant's last known address. However, if the claimant has a designated representative before OWCP, the copy of the final decision will be mailed to the representative. Notification to either the claimant or the representative will be considered notification to both parties.

#### **§ 30.317 Can the FAB request a further response from the claimant or remand a claim to the district office?**

At any time before the issuance of its final decision, the FAB may request that the claimant submit additional evidence or argument, or remand the claim to the district office for further development without issuing a final decision, whether or not requested to do so by the claimant.

#### **§ 30.318 Can the FAB consider an objection to a determination by HHS with respect to an employee's dose reconstruction?**

(a) If the claimant objects to HHS's reconstruction of the radiation dose to which the employee was exposed, the FAB will evaluate the factual findings upon which HHS based its dose reconstruction. If these factual findings do not appear to be supported by substantial evidence, the claim will be remanded to the district office for referral to HHS for further consideration.

(b) The methodology used by HHS in arriving at reasonable estimates of the radiation doses received by an employee, established by regulations issued by HHS at 42 CFR part 82, is binding on the FAB. The FAB reviewer may determine, however, that arguments concerning the application of that methodology should be considered by HHS and may remand the case to the district office for referral to HHS for such consideration.

#### **§ 30.319 May a claimant request reconsideration of a final decision of the FAB?**

(a) A claimant may request reconsideration of a final decision of the FAB